



Legal Update

April 14, 2014

The SJC holds that emergency aid exception to the warrant requirement extends to animals in certain circumstances!

Commonwealth v. Heather Duncan, SJC No., 11373

Background: Police responded to the residence of the defendant Heather Duncan (hereinafter referred to as “Duncan”) to serve a 209A restraining order on Duncan’s husband. When they arrived, police observed that “the home was surrounded by six foot tall privacy fence, reinforced by tarps, plastic strips and plywood,” and that two (2) dogs in the front yard “were in bad shape” and “in need of help.” Police asked who owned the dogs and Duncan said they belonged to her. At the time, the police did not conduct a further inquiry nor did police contact animal control. Six (6) days later, police were dispatched to the house after a neighbor reported that two dogs were dead and a third was emaciated. Police looked over the fence and observed two dogs laying still and a third dog whimpering in Duncan’s yard. There was no food or water near the dogs and the weather conditions were severe. The police made several attempts to contact the home owners including activating sirens and emergency lights. Eventually, the fire department assisted and police were able to gain access to the yard without a warrant. Animal control also responded and took custody of the three dogs.

Duncan was charged with three (3) counts of animal cruelty under M.G.L. c. 272, § 77; and she filed a motion to suppress evidence obtained as a result of the warrantless search. The motion was allowed but the judge submitted a question of law asking whether the ‘pure emergency’ exception to the warrant extended to animals?

For specific guidance on the application of these cases or any law, please consult with your supervisor or your department’s legal advisor or prosecutor.

Conclusion: The SJC held that in “appropriate circumstances, animals, like humans, should be afforded the protection of the emergency aid exception and would allow police “to enter a home without a warrant when they have an objectively reasonable basis to believe that there may be an animal inside who is injured or in imminent danger of physical harm.”

1st Issue: Does the emergency aid exception extend to animals and if so are there any guidelines that should be followed?

The SJC held that the emergency aid exception does extend to animals in certain circumstances but it does not change “the essential framework for determining when a warrantless police search of the home is permissible under it.” Whether dealing with humans or animals, police must adhere to strict requirements under the emergency aid exception. First, police must “have objectively reasonable grounds to believe that an emergency exists,” and second “police conduct must be reasonable under the circumstances after gaining entry.”

There are some additional factors that should be considered when determining whether a ‘pure emergency’ exists for animals. Prior to entering a home without a warrant to assist animals in need, police should consider the factors listed below:

- a. Was the animal's condition caused by human abuse or neglect?
- b. What kind of species was the animal in need?
- c. What was the nature of the privacy interest at issue?
- d. What efforts were made to obtain the consent of the property owner prior to making entry onto the property?
- e. How significant was the intrusion and was there any damage done to the property?

There are no definitive guidelines that cover every scenario involving animals but the SJC advises that when determining whether the search is reasonable, the Court will look at the “totality of the circumstances.” In this case, police found two animals deceased and frozen to the ground in the front yard of Duncan’s home. Police also noticed that there was no food or water outside and the third dog was whimpering and leashed outside in cold temperatures. All of these factors would suggest that the third dog was in imminent danger based on the conditions that the police found it in.

Commentary: This case serves as a good review of what qualifies as a ‘pure emergency’ under the emergency aid exception to the warrant requirement. Under the emergency aid exception, police can enter a home without a warrant if they have a reasonable basis to believe that someone inside is injured or is in imminent danger of physical harm. Emergency aid does not require police to have probable cause to enter a home because the purpose for entry is not to investigate a crime but to avert danger. *Commonwealth v Snell*, 428 Mass 766 (1999). As mentioned previously, in order for the police to gain entry into a home without a warrant under the emergency aid exception, police must have a reasonable belief that someone is injured or in grave danger and once inside police conduct must be reasonable under the circumstances. The emergency aid exception still remains a narrow exception to the warrant requirement.

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